

## MARKETPLACE FAIRNESS ACT

Mr. HATCH. Mr. President, over the last few months I have come to the floor several times to discuss the need for the Senate to return to regular order. If the last several years taught us anything, it is that efforts to force legislation through the Senate without full and fair consideration tend to yield unsatisfying results.

Complaints about the lack of bipartisanship have more or less become the norm around here, and we hear all the time about the desire for the so-called grand bargains. Bipartisan agreements don't just happen. I think we would all agree grand bargains cannot be made out of thin air.

Luckily the Senate already has a system in place for fostering these types of agreements. It is called regular order. Yet today the Senate will vote on cloture on the motion to proceed to the so-called Marketplace Fairness Act, and in doing so, the Senate will once again abandon regular order in favor of the whims of the Senate Democratic leadership. This is a bill that falls under the jurisdiction of the Senate Finance Committee, but the committee has not had a markup on the bill. Instead the Marketplace Fairness Act is just the latest in a long line of bills brought before the full Senate without due consideration in the committee of jurisdiction.

This has become far too common. I understand there are those who feel strongly about this legislation, and I admire them and respect the sponsors of the bill who worked hard to address what they see as a major problem with our Nation's tax policy.

However, that simply is not enough to justify yet another abdication of the committee process here in the Senate.

The Senate is organized into various committees of jurisdiction so Members are able to develop and utilize their own expertise on specific issues. When a piece of legislation goes through the committee process, it is thoroughly vetted and examined. This provides an opportunity to resolve technical issues and address various concerns before the bill is brought to the floor for a vote.

Regular order is not a process designed to protect the power of committee chairmen and ranking members. We have regular order and our committee structure so we have an organized way of ensuring our constituents are fully represented and to make sure the legislation we pass is technically sound. The legislation we will be voting on today is a perfect example of the importance of regular order.

The Marketplace Fairness Act is a bill that will have a significant impact on millions of consumers and businesses throughout the country, and clearly, this is no trifling matter.

Most reasonable people would agree that a bill of this magnitude would benefit from full and fair committee consideration, including a markup with an open debate and an opportunity to vote on amendments before it is

brought to the floor. However, being reasonable doesn't appear to be part of the equation on the floor today.

I want to stress I am not fundamentally opposed to this legislation. My goal is not to stop it at all costs. Instead, I simply want to ensure it is fully vetted and examined. I know if all sides are able to look at this in a dispassionate way, we might find ways of bringing all sides together, and that is not going to happen the way it is being done now. Therefore, today's vote is, in my view at least, as much a vote on regular order as it is a vote on the underlying bill.

That said, I do have specific concerns about the legislation as it is currently drafted. To begin with, the Marketplace Fairness Act in its current form is a fairly short 11 pages long. This bill essentially provides two avenues for States to compel remote sellers or out-of-State businesses to collect and remit sales and use taxes. Under the bill, the State may either meet specified minimum requirements or be a member State under the Streamlined Sales and Use Tax Agreement, as long as the minimum requirements are met under the agreement.

The Streamlined Sales and Use Tax Agreement is a good deal more complicated than the Marketplace Fairness Act. For starters, at 203 pages, the agreement is about 18 times longer. Since its adoption on November 12, 2002, the Streamlined Sales and Use Tax Agreement has been amended 28 times, most recently last year. It is not a simple little problem here.

The streamlined sales tax governing board has done excellent work in bringing States together to cooperatively and voluntarily address the issues of sales and use tax complexity and administration, just to mention a few issues.

According to the streamlined sales tax governing board, 24 States have adopted the simplification measures in the agreement, representing 31 percent of the population.

The authors of the Marketplace Fairness Act hope to apply its measures to all 50 States and 100 percent of the population.

However, the bill is comparatively short on details. For example, the Streamlined Sales and Use Tax Agreement contains provisions on rules for the sourcing of sales, along with exclusions to those rules. In order to levy the appropriate sales tax, the location and subject matter of the transaction must be determined. This level of detail is not present in the Marketplace Fairness Act.

It is unclear if the floor established on sourcing requirements under this bill is sufficient to protect consumers from unintended consequences. For example, I have received a letter from the American Society of Pension Professionals and Actuaries which is worried that this legislation "would allow states to impose a financial transaction tax that would apply to Amer-

ican workers' 401(k) contributions and other transactions within workers' accounts."

Another concern I have with the current version of the Marketplace Fairness Act is that it contains a preemption clause which could make it possible for States to expand the reach of their sales taxes through creative legislating. The Streamlined Sales and Use Tax Agreement at least provides an avenue for the input of multiple States. The States that are not subject to the agreement would, under this bill, be able to legislate knowing that the Federal Government will compel enforcement of their tax law on non-residents.

I am concerned with the transition costs that will come with this legislation for retailers who have been operating in an environment where they have not been required to collect and remit sales taxes for States where they do not have a physical presence. This legislation would change that almost in an instant.

Before we enact a new sales tax system, we need to take into account the costs that system will impose on businesses of all sizes and the difficulties these companies will face as they adapt to the new regime.

For example, there is the issue of vendor compensation. The Streamlined Sales and Use Tax Agreement currently includes a provision giving States the opportunity to voluntarily compensate remote sellers "as a measure of good faith" for registering to voluntarily collect and remit sales taxes into States where the seller has no physical presence. This is included in the agreement because under the current law remote sellers are generally not required to collect and remit the sales tax, and they incur a cost when they do so.

The Marketplace Fairness Act does not include any provision for compensation of remote sellers. I believe this is something we must take into account and examine even more thoroughly. I am also concerned about the small-seller exemption in the bill which would exempt sellers with national remote sales of less than \$1 million from the new requirements to collect and withhold sales taxes. This seems like an important concession, but it is not without its problems.

First of all, the cap on the exemption is not indexed to inflation. I think anyone who has observed any part of the roughly 50-year process where the alternative minimum tax has grown from a fairness measure targeting the rich to an ever-increasing burden on the middle class should understand how inflation can radically distort policy outcomes over a period of time. In addition, there are many who argue that the \$1 million exemption may be too low. In my view, these are concerns we need to fully consider before bringing the bill to the floor.

Finally, I want to point out that the bill does not include a provision for a

dispute resolution venue. Ideally the bill would give Federal district courts exclusive jurisdiction in matters concerning the implementation of this legislation. Policy changes with such far-reaching effects inevitably lead to unexpected issues and consequences. Giving Federal courts this jurisdiction would ensure greater uniformity and application of this legislation across the country.

These are only a few of the concerns I have regarding the Marketplace Fairness Act. I don't believe these are necessarily fundamental concerns, but they are issues that need to be addressed.

I am quite certain that, if given an opportunity, the Finance Committee could address these issues without inexorably changing the underlying purpose of the bill. However, if we proceed with floor debate on the Marketplace Fairness Act as is, we will not have that opportunity.

The Senate simply cannot continue to operate this way. Once again, we need to restore the deliberative traditions of the Senate, and that means a return to regular order.

I know a number of my colleagues have expressed similar concerns about the need to restore the committee process in the Senate. I hope they will join with me in voting no on cloture on the motion to proceed to the Marketplace Fairness Act. This doesn't necessarily determine how I am going to vote on the final analysis of this, but I sure as heck would like to approach this in a much more intelligent and legislatively profound way than we are doing here tonight.

By the way, we can talk about the fairness of this thing, but there are a lot of stakeholders that are not quite convinced this is as fair as those who are supporting the bill actually claim.

I hope we can have a more deliberative process to examine these matters. The distinguished chairman of the committee has offered to have a hearing on the bill, mark up the bill, and consider it in a regular-order approach in the immediate future as soon as we get back from this next recess. Frankly, I think that is a pretty good offer, and it is one we ought to honor if we honor our committee structure in the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I understand that unanimous consent was given earlier to have printed in the RECORD an op-ed from the Wall Street Journal by Arthur B. Laffer entitled "Tax Internet Sales Stimulate Growth."

Mr. ALEXANDER. Mr. Laffer, as most Americans know, is a distinguished economist. People sometimes said he was President Reagan's favorite economist. He makes the argument that many conservatives and many Governors across the country make, which is: Give us the authority to

make these decisions for ourselves. We will collect taxes from everybody who already owes the taxes by requiring sellers to collect the taxes whether they are in State or out of State, and then we will lower the tax rate.

Mr. Laffer says fairness legislation that collects taxes from everyone who owes it and then lowers the tax rate is better for economic growth, which is something our country desperately needs.

Mr. President, I also ask unanimous consent to have printed in the RECORD the comments supporting specifically the legislation from Al Cardenas, chairman of the American Conservative Union, Governor Mike Pence of Indiana, and former Governor Mitch Daniels of Indiana.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONSERVATIVES SUPPORT MARKETPLACE  
FAIRNESS

AL CARDENAS, CHAIRMAN OF THE AMERICAN  
CONSERVATIVE UNION

"When it comes to state sales taxes, it is time to address the area where federally mandated prejudice is most egregious—the policy toward Internet sales, the decades old inequity between online and in-person sales as outdated and unfair."

GOVERNOR MIKE PENCE

"I don't think Congress should be in the business of picking winners and losers. Inaction by Congress today results in a system today, that does pick winners and losers."

GOVERNOR MITCH DANIELS

"Sales taxes that states impose ought to be paid, and paid by everybody equally and collected by everybody in the retail business . . . We're not talking about an additional or new tax here—we're talking about the collection of a tax that's existed a long time."

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. We are in morning business for 1 more minute and then morning business will be closed and we will proceed to the motion under the agreement.

Mr. BAUCUS. Mr. President, I will take that 1 minute, please.

This is pretty simple. This legislation is new and only recently introduced. It has never been vetted. Others have but not this legislation. This bill is fraught with all kinds of problems, some of which have already been enumerated on the floor. There are many unintended circumstances.

The only right thing to do is to permit this to go back to the committee so the committee can take it up. As chairman of the committee, I have made that promise many times. We have already had hearings. We will have a markup on this bill in the next work period. A markup means there will be a vote. I stand here ready to abide by the vote. I submit right now that the majority of the Members of the committee maybe will let us work this thing. I don't know. But that is the process. That is what we should be doing, not just ramming this thing

through, which is so complex. There are so many unintended consequences. Many of the consequences have been enumerated and not addressed but could be addressed and would be addressed in a proper committee forum.

I yield the floor.

CONCLUSION OF MORNING  
BUSINESS

The PRESIDING OFFICER. Morning business is closed.

MARKETPLACE FAIRNESS ACT OF  
2013—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 743 which the clerk will report.

The assistant legislative clerk read as follows:

Motion to proceed to the consideration of Calendar No. 41, S. 743, a bill to restore States' sovereign rights to enforce State and local sales and use tax laws, and for other purposes.

CLOTURE MOTION

The PRESIDING OFFICER. The clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to Calendar No. 41, S. 743, To restore States' sovereign rights to enforce State and local sales and use tax laws, and for other purposes.

Harry Reid, Richard J. Durbin, Sherrod Brown, Sheldon Whitehouse, Amy Klobuchar, Joe Manchin III, Richard Blumenthal, Patrick J. Leahy, Martin Heinrich, Angus S. King, Jr., Al Franken, Tom Harkin, Carl Levin, Mark Begich, Brian Schatz, Robert Menendez, Tammy Baldwin.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 743, a bill to restore States sovereign rights to enforce State and local sales and use taxes, and for other purposes, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Oregon (Mr. MERKLEY), and the Senator from New Hampshire (Ms. SHAHEEN), are necessarily absent.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Wisconsin (Mr. JOHNSON) and the Senator from Alaska (Ms. MURKOWSKI).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?